approved by the Municipality and that they were actively prosecuting the legal proceedings necessary to overcome the initial obstacles imposed by the Control of Rent Ordinance. I would add that as a matter of commonsense it might be thought that a party owning land with a frontage to Batu Road had every incentive to make more profitable use of it than allowing it to be occupied by single-storied shophouses subject to the Control of Rent Ordinance.

On all that I do not think it could possibly be said that there was no evidence to support the view that the landlord had an intention to demolish and rebuild of the sort described by Asquith L.J., in *Cunliffe* v. *Goodman, supra* nor is it possible to detect anything which is contradictory of such a view.

I now apply Lord Radcliffe's third test in which the important word is the word "only."

It is true that Shepherd J., on his own consideration of the evidence came to the conclusion that no intention of the necessary quality was made out. What he said was:—

"I cannot but conclude that all that has occurred in this case is that the building owner has conceived a desire to demolish and rebuild; has taken that desire to the stage of contemplation and of preliminary investigation; but no further."

That may be a reasonable conclusion from the evidence and it is certainly a conclusion that is contradictory of the conclusion of the Rent Assessment Board. But to say that it is the only reasonable conclusion from the evidence is to say something very different. To say that it is the only reasonable conclusion is to say that any other conclusion is unreasonable.

It was not sufficient for the learned Judge to consider the Board was wrong. Before he was entitled to say that they had erred in law he had to consider that their conclusion was an unreasonable inference from the primary facts that were proved in evidence for unless their conclusion was unreasonable his own conclusion was not the only reasonable one. He did not go so far as to say that the Board's conclusion was unreasonable and on my own view of the evidence if he had gone so far he would have been wrong.

I am thus compelled to the results that the appeal to the High Court was allowed not on a point of law but on a point of fact and that there was no error in law involved in their decision that the landlord intended to demolish the premises for the purpose of rebuilding.

As regards the other part of the Board's decision, that demolition and rebuilding would be in the public interest, all I have to say is that whether that be a question of law or of fact it was proved beyond any question of reasonable doubt by the evidence of the Town Planning Officer.

I would allow the present appeal and set aside the order of the High Court setting aside the certificate of the President of the Rent Assessment Board. The appellant should have her costs before the Rent Assessment Board and in the High Court and the costs of the present appeal.

Rigby and **Ong JJ.** concurred.

Appeal allowed.

Solicitors: *R. R. Chelliah*; *Braddell & Ramani.*

MOKHTAR v. ARUMUGAM

[C. A. (Thomson C.J., Smith and Ong JJ.) February 11, 1959]

[K. L. — F.M. Civil Appeal No. 47 of 1958]

Practice and Procedure — Award of relief not prayed for — Prayer praying for "any other order as may deem fit and proper" — R.S.C. 1957, O.20 r.6.

Damages — Claim for damages must be distinctly pleaded.

A plaintiff cannot, under a general prayer for further relief, obtain any relief inconsistent with that relief which is expressly asked for.

If damages form part of the relief sought, they should be distinctly claimed.

Cases referred to:—

(1) *Cargill* v. *Bower* 10 Ch. D. 502.

(2) *London, Chatham & Dover Rly. Co.* v. *South Eastern Rly. Co.* [1892] 1 Ch. 120, C.A.

COURT OF APPEAL.

Mohamed Salleh bin Abbas (Federal Counsel) for the appellant.

K. L. Devaser for the respondent.

The facts appear sufficiently from the judgment of the Court delivered by,

Smith J.: This was an appeal by the defendant against the order of the trial Judge awarding $200 damages and taxed costs to the plaintiff. This written judgment elaborates the oral judgment which I delivered in Court.

The plaintiff was a gardener working at a house in Ceylon Lane. The defendant was at that time a police inspector attached to the Campbell Road Police Station. It was alleged that on 5th September, 1957, the defendant who had no search warrant had made an unlawful search of the plaintiff's house and taken away certain documents, viz. an I.O.U., a statement of accounts and some letters. The plaintiff also alleged that he had been manhandled and unnecessarily detained at the police station in connection with enquiries into an alleged offence under the Moneylenders Ordinance, 1951. The plaintiff alleged that he thereby suffered physically and mentally, that he was very nervous and apprehensive why he was questioned over and over again by the defendant and that he was ashamed and humiliated when the defendant and

the police constable came up to his house and took him to the police station by pushing him in the presence of his several neighbours.

The remedies for which the plaintiff prayed were:—

(1) The defendant do pay a sum of $5,000/- being damages for physical and mental strains as the plaintiff was ashamed, hated and ridiculed amongst his friends, neighbours and relatives;

(2) That the defendant do return to the plaintiff the said I.O.U. and the file in Kuala Lumpur Magistrate's Court Civil Suit No. 1322/56;

(3) Any other order may be made as this Honourable Court may deem fit and proper; and

(4) Costs of this suit.

The learned trial Judge found as a fact that although the defendant made a search without a search warrant, nevertheless the defendant had asked the plaintiff for permission to search and the plaintiff had given it. He found that the allegations of rough handling and detention at the police station had not been proved. He did, however, find that no express permission had been given by the plaintiff to the defendant to take any documents from his house, and further held that though he found as a fact that the plaintiff had given his consent to the search, nevertheless he was not entitled to seize the documents which he did seize. To quote his words:—

"Under all the circumstances I am not satisfied that plaintiff has proved unlawful search, criminal force or false imprisonment. I am, however, satisfied that he has proved trespass to documents by the defendant's unlawful seizure thereof.

There will be judgment for plaintiff for $200/- damages for trespass to documents, and costs."

It is against that judgment which the defendant has appealed. One ground of appeal is that the plaintiff has been awarded a relief which he did not seek. The plaintiff never asked for damages for trespass to his documents. What he did ask for was "that the defendant do return to him the said I.O.U. and the file in K.L. Magistrate's Court Civil Suit No. 1322/56".

It is clear from the record that the plaintiff signed the statement of plaint on 24th December, 1957, and that later the same day the I.O.U. and case file had both been returned to him. The suit was registered on 11th January, 1958, and probably filed not more than three days before that. What is clear is that before the plaintiff's solicitor filed the statement of plaint the plaintiff had already received both documents.

The position when the suit was filed was that the prayer for the return of the documents was unnecessary since the plaintiff had already received them and the plaintiff had not made any claim for damages for trespass to them. In the course of the trial the pleadings were not amended to include any claim for damages in respect of the documents.

The prayer of the plaintiff, if it is to succeed at all, must succeed under the third prayer praying for "any other order as this Honourable Court may deem fit and proper".

Order 20 rule 6 reads as follows:—

"Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a Judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counterclaim made, or relief claimed by the defendant, in his defence."

In *Cargill* v. *Bower*, [1] at page 508, Fry J. said: "You cannot, under a general prayer for further relief, obtain any relief inconsistent with that relief which is expressly asked for".

Lord Atkin's "Encyclopaedia of Court Forms and Precedents in Civil Proceedings", Volume XIII at page 177 says: "If damages form part of the relief sought, they should be distinctly claimed, although an omission to ask for damages in the pleadings will not prevent them being given if justice so require it." The case referred to in the footnote is that of *London, Chatham and Dover Railway Co.* v. *South Eastern Railway Co.*[2]. The Court there was considering in an action for an account whether damages for the delay in paying certain balance might be given in the nature of interest. Kay L.J. at page 151 went on to discuss the occasions on which such damages may be given. He said:—

"Such damages may be given in some kind of actions. By the 3rd & 4th Will. 4, c. 42, s. 29, the jury may give damages in the nature of interest in all actions of trover or trespass *de bonis asportatis* and in actions on policies of assurance made since that statute. Independently of the statute, Courts of Common Law gave such damages in certain other actions, as for example for breach of a contract to give a bill of exchange which, if given, would carry interest. In such an action the Court may direct a jury to give damages for loss of the interest to which the plaintiff would have been entitled."

Section 29 of 3 and 4 Will. IV, C.42 reads as follows:—

"And be it further enacted, That the Jury on the Trial of any Issue, or on any Inquisition of Damages may, if they shall think fit, give Damages in the Nature of Interest, over and above the Value of the Goods at the Time of the Conversion or Seizure, in all Actions of Trover or Trespass *de bonis asportatis*, and over and above the Money recoverable in all Actions on Policies of Assurance made after the passing of this Act."

It is quite clear that in England the power of the Court to award damages in the nature of interest for delay in returning specific goods is a remedy conferred by statute and not one available at Common Law. This relief, being a creature of English statute, is not available here: see section 3(1) of the Civil Law Ordinance, 1956. But even if it was in this particular case there was no issue before the Court with regard to the return of goods since the goods had already been returned before the action was commenced.

For these reasons we allowed this appeal and ordered that the judgment of the High Court be set aside and that the claim of the plaintiff-respondent be dismissed. The question of costs is reserved for argument at the next sitting of the Court of Appeal in Kuala Lumpur.

Appeal allowed.

Solicitors: *K. L. Devaser & Co.*